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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

JAMES ARNETT,

Plaintiff,

vs.

BENJAMIN SNOW HOWARD, LIFELINE  
MEDIA LLC, a Texas entity, NATIONWIDE  
AFFORDABLE HOUSING, a Texas  
corporation, and the BEN HOWARD TRUST,  
an IDAHO TRUST,

Defendants.

**CASE NO. CV-12-0311-TUC-DCB-DTF**

**MOTION TO STRIKE PLAINTIFF'S  
"MOTION FOR LEAVE TO FILE SUR-  
REPLY IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS  
REPLY"**

**&  
MEMORANDUM IN SUPPORT**

**(Assigned to Magistrate Judge D.  
Thomas Ferraro)**

Defendants Benjamin Snow Howard ("Howard"), Lifeline Media LLC ("Lifeline"),  
Nationwide Affordable Housing ("NAH"), and the Ben Howard Trust ("the Trust") request,

1 under LRCiv 7.2(m)(1), that the Court strike Plaintiff's recent filing entitled "Motion for  
2 Leave to File Sur-Reply In Opposition to Defendants' Motion to Dismiss Reply."<sup>1</sup>

3 Plaintiff's filing is not authorized by any rule or order. The Rules only allow a  
4 motion and memorandum in support, a responsive memorandum in opposition to a motion,  
5 and a reply.<sup>2</sup> This exact Court and Magistrate Judge recently faced a nearly identical  
6 procedural situation in *Murchison v. Tucson Unified School District*.<sup>3</sup> In that case, another  
7 pro se plaintiff attempted to file a "sur-reply" to the defendants' motion to dismiss. The  
8 defendants filed a motion to strike the sur-reply, on the grounds that it was not allowed  
9 under the local rules. This Court granted the defendants' motion to strike the sur-reply.<sup>4</sup>

10 Here, Plaintiff's filing should receive identical treatment. His filing is not allowed  
11 by the Federal Rules of Civil Procedure, the Local Rules, or by any order. Additionally,  
12 Plaintiff's filing is unnecessary because Defendants did not raise any substantially new  
13 issues in their Reply in Support of Motion to Dismiss.<sup>5</sup>

14 Furthermore, Plaintiff also requested in his filing that the Court strike Defendants'  
15 Reply in Support of Motion to Dismiss.<sup>6</sup> However, Plaintiff's request should be denied  
16 because there is no proper legal basis or grounds for the Court to strike Defendants' Reply  
17 brief.

18 Plaintiff's continual ignorance of or disregard for the rules is delaying and driving up  
19 the costs of this litigation. Defendants emphasize that in this Circuit, "pro se litigants are not  
20 excused from following court rules."<sup>7</sup>

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25 1 (Document 32).

26 2 LRCiv 7.2(a)-(d).

27 3 2012 WL 4762462 (D. Ariz).

28 4 *Id.* at \*1.

5 (Document 26).

6 (Document 26).

7 *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir. 1997).

1 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of November, 2012.  
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4 **DAVIS MILES MCGUIRE GARDNER, PLLC**  
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6 By /s/ Scott F. Gibson  
7 Scott F. Gibson  
8 80 E. Rio Salado Pkwy., Ste. 401  
9 Tempe, AZ 85281  
10 *Attorneys for Defendants*  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing  
**MOTION TO STRIKE PLAINTIFF’S “MOTION FOR LEAVE TO FILE SUR-  
REPLY IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS REPLY” &  
MEMORANDUM IN SUPPORT** was served upon all persons entitled to receive notice in  
this case via ECF notification or by U.S. Mail on November 26, 2012 to the following:

Magistrate Judge D. Thomas Ferraro  
United States District Court  
Evo A. DeConcini U.S. Courthouse  
405 West Congress Street, Suite 6660  
Tucson, AZ 85701

James Arnett  
9288 N. Monmouth Court  
Tucson, AZ 85742  
*Plaintiff Pro Per*

/s/ Annette T. Hernandez